

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA

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CIVIL ACTION # 2:06-CV-1019-MHT
2006 DEC 22 A 10:03

DEBRA P. HACKETT, CLERK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA.
ROYCE PRIVETT,
PLAINTIFF,
VS.

STATE OF ALABAMA,
DEFENDANTS.

OBJECTION TO MAGISTRATE'S Recommendation

Comes now the plaintiff, Royce Privett, Pro-Se, in the above styled cause, and pursuant to the Recommendation and order of the magistrate issued on December 13, 2006, and files his objection, and the plaintiff shows the following in support thereof:

- 1). The magistrate incorrectly states that "No Actual Controversy in this exist to confer jurisdiction on the court, this however is not so because, in Gibson v. Firestone, 741 F.2d 1268 (11th Cir. 1984)" Alleged deprivation of first amendment right to vote as well as the 14th amendment rights of due process and equal protection are adequate to invoke federal jurisdiction thus a claim is stated under 28 U.S.C. § 1343(3), and, in Linda R.S. v. Richard D., 35 L.E.d 2d 536, the U.S. Supreme Court stated, "the threshold question which must be answered is whether the Appellant has alleged such a personal stake in the outcome

(1)

of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for the illumination of constitutional questions". Quoting from BAKER V. CARR, 369 U.S. 186, 7 L.Ed 2d 663, 82 S.Ct. 691 (1962) and, in Buhgas A. G. V. Marathon Oil Co., 526 U.S. 574, 143 L.Ed.2d 760, 119 S.Ct. 156, 163 (1999) "to satisfy actual controversy a plaintiff must demonstrate an injury in fact; a ~~cau~~ casual connection between the injury and the conduct of which the party complains; and that it is likely that a favorable decision will provide redress". The magistrates conclusion that no actual controversy exist is not well taken because, (1) the plaintiff has demonstrated an injury in fact; (2) the plaintiff has demonstrated a connection between the injury and the conduct complained of; (3) and, the plaintiff has demonstrated that a favorable decision will likely provide redress, furthermore, the magistrate's conclusion of "no jurisdiction" is also erroneous in this case because, (1) the plaintiff has alleged in his complaint that he has suffered a deprivation of due process and equal protection of the 14th Amendment because the challenged statute has subjected the plaintiff to the loss of his life and liberty based on allegations of sex offenses occurring 10 to 15 years prior to the allegation being made while under Alabama law a defendant in a

CIVIL SUIT CANNOT be subjected to the loss of his PROPERTY based upon the exact same UNDERLYING ALLEGATIONS that UNDERPIN the PLAINTIFF'S CONVICTIONS IN this case AS the ALABAMA SUPREME COURT STATED IN TRAVIS V. ZITLER, 681 S.2d 1348 (ALA. 1996) "We hold that allegations of Repressed memories of Childhood Sexual Abuse are subject to the two year limitations period." The PLAINTIFF AVERS that the magistrate's Recommendation is Nothing more "than a facial attack upon the plaintiff's Complaint, and IN WILLIAMSON V. TUCKER, 645 F.2d 405 (5th CIR. 1981) AND, PATTERSON V. WEINBERGER, 644 F.2d 521 (5th CIR. 1981) Relying ON BELL V. HOOD, 327 U.S. 678 66 S.Ct. 773 (1935) STATED, "If the motion to dismiss is a facial attack on the complaint, the Reviewing Court must consider the allegations in the Plaintiff's Complaint as true". Because the magistrate has sua sponte substitute itself for the defendants by ordering them "Not" to Respond to the Complaint it is ERROR NOT to allow the plaintiff to elicit material through discovery Before a CLAIM CAN be dismissed for Lack of JURISDICTION. See, BLANCO V. CARIBBEAN LINES, 632 F.2d 656 (5th CIR. 1980). While the magistrate's Recommendation • is quite UNCLEAR ON the FINAL determination of the Reason for the Recommended dismissal, is it (1) Due to the conclusion that the statute does NOT violate the EX POST FACTO CLAUSE? OR (2) IS it because the complaint is being Treated as a § 1983? (3) OR is it because it is being treated as a successive habeas? The plaintiff contends that if it is the

being Recommended for dismissal due to the conclusion that the Statute does Not Violate the Ex post facto Clause, this assumption is erroneous because that conclusion does Not consider the case of Stoner v. Graddick, 751 F.2d 1535 (N.D.ALA. 1986) where Stoner was denied Relief on his claim that the Amended Statute of Limitations in his case Should be Applied to his crime that did Not have a Statute of Limitations when he committed the offense, and even though the pre-existing Statute of Limitations in Stoner had Not Ran by the date the Amend Statute became Law, Relief was denied based upon the fact that the Statute of Limitations in Alabama involves a Substantive Right And is Not merely a procedural matter, and stated it would violate ex post facto to Attach the Amended Statute of Limitations to Stoner's crime Even though the pre-existing Limitations period had Not Ran. And Apparently the magistrate's Reliance on Collins v. Youngblood, 497 U.S. 37, 50, 110 S.Ct. 2715, 2723, 111 L.Ed.2d 30 (1990) Because the magistrate submits that Under that case Code of Ala. 1975 § 15-3-5(b)(2) is merely A procedural change that did Not Eliminate a defense. However, in Carmell v. Texas, 529 U.S. 513, 146 L.Ed.2d 571 (2000) the U.S. Supreme Court stated "Collins did Not cast out the 4th category of Calder And in fact quoted Brazell v. Ohio, 269 U.S. 167, 70 L.Ed 216 (1925) that any Law that deprives a defendant of a defense is Ex post facto," And the Plaintiff contends that because the Statute of Limitations in Alabama is Not merely a procedural matter, And Because of the Application of State Laws in Stoner, And

Because of the fact the Recommendation does not address either Stoner, OR Ziter, OR the fact that your petitioner has alleged a deprivation of due process and equal protection, the conclusion of the magistrate is erroneous. And furthermore, as evidenced by the Recommendation itself, the first habeas petition was denied completely on procedural grounds and therefore, this cannot be a second or successive petition. See, SLACK V MCDANIEL, 529 U.S. 473, 146 L.Ed2d 542, AND DAY V McDONOUGH 572 U.S. 164 L.Ed2d 376 (2006).

CONCLUSION

Wherefore, premises considered, the plaintiff prays this court to reject the magistrate's Recommendation of dismissal under GIBSON V. FRESTONE, 741 F.2d 1268 (11th Cir. 1984) AND to rescind its order denying the motion for a 3 Judge court AND to empanel a court of three judges, to avoid the unnecessary delay AND expense of mandamus to the U.S. Supreme Court in this cause, See, FLORIDA LIME & AVACADO GROWERS INC. V. JACOBSEN, 362 U.S. 42 L.Ed2d 568, AND STRATTON V. ST. LOUIS R. CO. (1930) 282 U.S. 10, 75 L.E.d 135, 51 S.Ct 8. the plaintiff prays any and other relief appropriate.

Raege Pruiett

PLAINTIFF

Certificate of Service

I hereby certify that I have served a copy of the foregoing upon the Attorney General, 11 South Union Street Montgomery, AL 36130, by US MAIL FIRST CLASS, Postage pre-paid on the 19th day of December 2006.

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